

sixty days after receipt of the demand, the person making the demand may compel compliance by an action in the probate court or by a suit in the district court. After a hearing, the court shall enter an order requiring the accounting to be made at such time as it deems proper under the circumstances."

Sec. 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the senate on May 10, 1973: Yeas 31, Nays 0; passed the house on May 12, 1973: Yeas 127, Nays 0, three present not voting.

Approved May 25, 1973.

Effective May 25, 1973.

COASTAL PUBLIC LANDS MANAGEMENT ACT OF 1973

CHAPTER 185 ⁴⁶

S. B. No. 644

An Act relating to the management, control and use of coastal public lands as defined in this Act; prescribing the powers and duties of the School Land Board and the General Land Office in regard to these lands, to the acquisition of other lands, and to carrying out the provisions of this Act; providing for cooperation with the federal government and agencies of this state; providing certain protection, privileges and rights for owners of littoral property and duties of such owners; providing for disposition of funds; providing certain court remedies; prescribing penalties for violations of this Act; repealing Chapter 377, Acts of the 57th Legislature, Regular Session (Article 5415e, Vernon's Texas Civil Statutes), and prescribing the relationship of this Act to related law of this state; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Short title

Section 1. This Act may be cited as the Coastal Public Lands Management Act of 1973.

Policy

Sec. 2. The surface estate in the coastal public lands of this state constitutes an important and valuable asset dedicated to the permanent school fund and to all the people of Texas. It is the declared policy of this state that such estate be managed pursuant to the following policies:

(a) The natural resources of the surface estate in coastal public lands shall be preserved. Such resources shall be construed to include the natural aesthetic values of those areas and the value of such areas in their natural state for the protection and nurture of all types of marine life and wildlife.

⁴⁶. Vernon's Ann.Civ.St. art. 5415e—1, §§
1 to 18.

(b) Uses which the public at large may enjoy and in which they may participate shall take priority over those uses which are limited to fewer individuals.

(c) The public interest in navigation in the intracoastal waters shall be protected.

(d) Unauthorized use of coastal public lands shall be prevented.

(e) Utilization and development of the surface estate in such lands shall not be allowed unless the public interest as expressed by this Act is not significantly impaired thereby.

(f) For the purposes of this Act, the surface estate in coastal public lands shall not be alienated except by the granting of leaseholds and lesser interests therein, and by exchanges of coastal public lands for littoral property as provided herein.

(g) Vested rights in land shall be protected, subject to the paramount authority of the state in the exercise of police powers to regulate the exercise of such rights; and the orderly use of littoral property in a manner consistent with the public policy of this state shall not be impaired.

Purpose

Sec. 3. The purpose of this Act is to implement the foregoing policies by delegating to the School Land Board, which shall be assisted by the planning division and other staff of the General Land Office, certain responsibilities and duties with respect to the management of the surface estate in coastal public lands.

Definitions

Sec. 4. As used in this Act, unless the context clearly requires otherwise:

(a) "Board" means the School Land Board.

(b) "Coastal area" refers to the geographic area comprising all the counties of Texas having any tidewater shoreline, including that portion of the bed and waters of the Gulf of Mexico within the jurisdiction of the State of Texas.

(c) "Coastal public lands" means all or any portion of state-owned submerged lands, the waters overlying those lands, and all state-owned islands or portions of islands in the coastal area.

(d) "Commissioner" means the Commissioner of the General Land Office.

(e) "Island" means any body of land surrounded by the waters of a salt water lake, bay, inlet, estuary, or inland body of water within the tidewater limits of this state and shall include man-made islands resulting from dredging or other operations.

(f) "Management program" means the coastal public lands management program called for in this Act, and shall include, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media inventorying coastal public land resources and capabilities, and setting forth objectives, policies, and standards to guide planning and to control the utilization of those resources.

(g) "Person" means any individual, firm, partnership, association, corporation (public or private, profit or nonprofit), trust, or political subdivision or agency of the state.

(h) "Seaward" means the direction away from the shore and toward the body of water bounded by such shore.

(i) "Structure" means any structure, work, or improvement constructed upon, affixed to, or worked upon coastal public lands, including, but not limited to, fixed or floating piers, wharves, docks, jetties, groins, breakwaters, artificial reefs, fences, posts, retaining walls, levees, ramps, cabins, houses, shelters, landfills, excavations, land canals, channels, and roads.

(j) "Submerged lands" means any land extending from the boundary between the lands of the state and littoral owners seaward to the low water mark on any salt water lake, bay, inlet, estuary, or inland water within the tidewater limits, and any land lying beneath such a body of water, but shall, for the purposes of this Act only, exclude beaches bordering on, and the waters of, the open Gulf of Mexico, and the lands lying beneath such waters.

(k) "Littoral owner", for the purposes of this Act only, means the owner of any public or private upland bordered by or contiguous to coastal public lands.

Administration

Sec. 5. The School Land Board is hereby designated the executive agency of the state charged with the administration, implementation, and enforcement of the provisions of this Act. The planning division and other staff of the General Land Office shall assist the board in the discharge of its responsibilities and duties under this Act; and the commissioner is authorized to employ such additional personnel in the General Land Office as may be necessary for the board to perform such functions effectively.

Duties and authority of the board

Sec. 6. The board, with the technical advice and assistance of the planning division and other staff of the General Land Office, shall perform the following duties:

(a) The board shall develop a continuing comprehensive coastal public lands management program pursuant to the policies set forth in Section 2 of this Act. The coastal public lands management program shall, in compliance with the Coastal Zone Management Act of 1972 (P.L. 92—583) include the following elements:

(1) A continuous inventory of coastal public land and water resources, which shall include a determination of the extent and location of the coastal public lands;

(2) A continuous analysis of the potential uses to which the coastal public lands and waters might be put, including recommendations as to which configurations of uses consonant with the policies of this Act maximize the benefits conferred upon the present and future citizens of Texas;

(3) Guidelines on the priority of uses in coastal public lands within the coastal area, including specifically those uses of lowest priority;

(4) A definition of the permissible uses of the coastal public lands and waters and definitions of the uses of adjacent areas which would have a significant adverse impact upon the management or use of coastal public lands or waters;

(5) Recommendations as to increments of jurisdiction or authority necessary to protect coastal public lands and waters from adverse consequences flowing from the uses of adjacent lands;

(6) An inventory of endangered environments and resources in the coastal public lands;

(7) Recommendations for any changes necessary in the organizational structure by which the program is implemented and administered.

(b) The board may review the management program periodically, and may amend the management program as new information or changed conditions may warrant.

(c) In developing the management program, the board shall, after due notice to littoral owners and the public generally, hold or cause to be held public hearings in such number and in such locations as the board may determine to be appropriate. In reviewing or amending the management program, the board may hold or cause to be held public hearings in the manner provided in this subsection.

(d) The board shall, upon receipt of appropriate applications, register existing structures extending onto coastal public lands from adjacent lands not owned by the state; and may, insofar as consonant with the policies of this Act, regulate the placement, length, design, and the manner of construction, maintenance, and the use of all structures which shall hereafter be built so as to extend onto coastal public lands from adjacent lands not owned by the state.

(e) The board may accept gifts of interests in lands, and interests so received shall become part of the permanent school fund unless otherwise designated by the grantor. Such lands may at the discretion of the board be managed as if they were coastal public lands within the meaning of this Act.

(f) The board shall have the authority to select and to purchase fee and lesser interests in lands of the coastal area for the creation, maintenance, or protection of wildlife refuges, estuarine preserves, natural scenic reserves, historical or archaeological sites, public recreational areas, and research facilities. Such interests may be purchased by the board with funds acquired by gift or grant, but not by condemnation. Interests so acquired shall not become a part of the permanent free school fund unless so designated by the board; but such interests may in the discretion of the board be managed as if they were coastal public lands within the meaning of this Act, regardless of whether they otherwise fall within the meaning of coastal public lands.

(g) The board may study various coastal engineering problems, such as the protection of the shoreline against erosion, the design and use of piers, groins, seawalls, and jetties, and the effects of various structures, works, and improvements upon the physical and biological systems of the coastal public lands.

(h) The board shall have the authority to locate and cause to be marked upon the ground the boundaries separating coastal public lands from other lands.

(i) The board shall receive and evaluate any complaint or report from any person regarding instances of unauthorized construction, maintenance, use, or assertion of control of any structure upon coastal public lands, and shall refer all cases warranting judicial remedies to the attorney general, who shall immediately initiate judicial proceedings for the appropriate relief.

(j) The board is hereby designated and shall serve as the official representative of the governor of the state to conduct with the federal government any business concerning any matter affecting the coastal public lands which arises out of the exercise by the federal government of any

authority it may have over navigable waters under the Constitution of the United States.

(k) The board is hereby authorized to prescribe reasonable filing fees and fees for the granting of a lease, easement or permit, and to promulgate such procedural and substantive rules and regulations as it considers necessary to administer, implement, and enforce this Act.

Grant applications, registration, and procedure

Sec. 7. (a) Any person desiring to acquire rights in the surface estate in any coastal public land shall make application in writing to the board in the form prescribed by the board. The application shall include the following:

- (1) An adequate legal description of the land in which rights are sought;
- (2) A statement of the rights sought;
- (3) A statement of the purpose or purposes for which the land is to be used;
- (4) A description of the nature and extent of the improvements, if any, which will be made on the land;
- (5) An estimate of the time within which any improvements to be made will be completed; and
- (6) Such additional information as the board may consider necessary, including, in the case of any application for approval of construction, modification, repair, or removal of a structure, a description of all plans for any filling, dumping, dredging, or excavating to be done.

(b) The board may grant the following interests in coastal public lands for the indicated purposes:

- (1) Leases for public purposes;
- (2) Easements for purposes connected with ownership of littoral property;
- (3) Permits authorizing limited continued use of heretofore unauthorized structures on coastal public lands, not connected with ownership of littoral property;
- (4) Channel easements to the holder of any surface or mineral interest in coastal public lands, for purposes necessary or appropriate to the use of such interests.

(c) Upon receiving an application, the board may circulate it for review and comment to the member agencies of the Interagency Natural Resources Council or its successor. Not less than 30 nor more than 90 days after receiving such application, the board shall determine whether the proposed application should be granted, and if so, it shall determine the reasonable term, conditions, and consideration for such grant and may consummate the transaction.

Leases for public purposes

Sec. 8. (a) The board may lease coastal public lands:

- (1) To the Parks and Wildlife Department, or to any eligible city or county, for public recreational purposes;
- (2) To the Parks and Wildlife Department, for management of estuarine preserves;
- (3) To any nonprofit, tax-exempt environmental organization approved by the board for the purpose of managing a wildlife refuge;
- (4) To any scientific or educational organization or institution for the purpose of conducting scientific research.

(b) Leases granted pursuant to this section shall be subject to the following policies, provisions, and conditions, in addition to those generally applicable in this Act:

(1) The littoral rights of the adjacent upland owner shall be protected;

(2) Members of the public may not be excluded from coastal public land leased for public recreational purposes or from an estuarine preserve;

(3) A county is eligible to apply for a lease for public recreational purposes of coastal public lands within the county and outside the boundary of any incorporated city, town, or village; and an incorporated city, town, or village is eligible to lease coastal public lands within its corporate boundaries for public recreational purposes;

(4) Any lessee granted a lease for public recreational purposes may enter into contracts and franchise agreements to promote public recreation, subject to the approval of the board; however, no such contract or franchise agreement may authorize any commercial activity within 300 feet of privately owned littoral property without the written consent of the littoral owner of such property.

Easements to the littoral owner

Sec. 9. (a) The board may grant easement rights to the owner of adjacent littoral property authorizing the placement or location of a structure on coastal public lands for purposes connected with the ownership of littoral property. The granting of an easement pursuant to this subsection, including the waiver in Paragraph (1) below, shall not be construed as recognition of a right existing in the littoral owner incident to the ownership of littoral property. Every such grant shall be subject to the following policies, provisions, and conditions, in addition to those generally applicable in this Act:

(1) The owner of littoral property may construct a pier which is not for commercial purposes, which does not exceed 100 feet in length nor 25 feet in width, and which requires no filling or dredging, without obtaining an easement from the board; however, the location and dimensions of any pier must be registered with the board in the manner provided in this Act.

(2) In the administration of this subsection, the board shall take into account the public policy of this state that the orderly use of privately owned littoral property in a manner consistent with the public policy of this state shall not be impaired.

(b) In the event the activity for which the easement is sought requires the littoral owner to seek one or more permits from any other agency or department of government of this state, the board may agree with such agency or department to issue a single document incorporating all rights and privileges of the applicant.

Permits

Sec. 10. (a) The board may issue permits authorizing limited continued use of heretofore unauthorized structures on coastal public lands, where such use is sought by one claiming an interest in any such structure but is not incident to the ownership of littoral property.

(b) Permits granted pursuant to this section shall be subject to the following policies, provisions, and conditions, in addition to those generally applicable in this Act:

(1) The board may not grant any permit authorizing the continued use of any structure located within 1,000 feet of:

(i) privately owned littoral property, without the written consent of the littoral owner;

(ii) any federal or state wildlife sanctuary or refuge;

(iii) any federal, state, county, or city park bordering on coastal public lands.

(2) A permit authorizing continued use of an heretofore unauthorized structure on coastal public lands shall be deemed automatically revoked and terminated if the coastal public land where the structure is located is subsequently leased for public purposes or exchanged for littoral property pursuant to this Act, or if such land is conveyed to a navigation district as provided by law.

(3) Every permit shall provide that in the event the terms of the permit are broken, the permit may, at the option of the board, be terminated.

(4) Such structures may be used only for noncommercial, recreational purposes.

(5) Permits may be issued for a period not to exceed five years and may be renewed at the discretion of the board.

(6) The board may not grant any application for a permit which would be in violation of the public policy of this state as expressed in this Act, nor may it grant any permit for any structure not in existence on the effective date of this Act.

(7) In the event a structure for which a permit has been issued is severely damaged or destroyed by any means, no major repairs or rebuilding may be undertaken by the permit holder without the approval of the board.

(c) All structures for which a permit is required pursuant to this section, now existing or which shall be built, are declared to be the property of the state; and any construction, maintenance, or use of such structure, except as authorized in this section, is declared a nuisance per se and is expressly prohibited.

Registration

Sec. 11. Any person claiming as an incident of the ownership of littoral property any right in any structure which as of the effective date of this Act is situated in whole or in part upon coastal public lands shall register the location and dimensions of such structure with the board on or before December 31, 1973, in the manner provided by the board pursuant to this Act. Registration of such structure by the board shall not be construed as evidence of the acquiescence of the state in such claim by the owner; however, the failure of any such owner to register such a structure shall estop such owner from making any further claim of right against the state in such a structure and shall render such structure a nuisance per se subject to abatement by the state at the expense of the littoral owner.

Remedies; penalties

Sec. 12. (a) Any owner of littoral property who fails to register the location and dimensions of a pier authorized to be constructed under

Paragraph (1), Subsection (a), Section 9 of this Act, shall be subject to a civil penalty of an amount not to exceed \$200.

(b) Any owner of littoral property or person acting under such owner, who shall, for purposes connected with the ownership of such littoral property, construct or fix or place upon coastal public lands any structure, without first having obtained an easement from the General Land Office, shall be subject to a civil penalty of an amount not to exceed \$200. Each day such structure remains on or affixed to coastal public lands constitutes a separate offense.

(c) Any person who shall maintain, use, or repair any structure for which a permit is required under Section 10 of this Act, without first having obtained a permit from the School Land Board, shall be subject to a civil penalty of not less than \$50 nor more than \$1,000.

(d) Any person who shall construct or fix or place upon coastal public lands any unauthorized structure for purposes not connected with ownership of littoral property shall be subject to a civil penalty of not less than \$50 nor more than \$1,000.

(e) The remedies provided in this section are cumulative of any and all others which may be applicable, including, where applicable, those remedies arising from the power of a court to enforce its jurisdiction and its judgments.

(f) In any proceeding arising out of any alleged violation of any provision of this Act or any rule or regulation promulgated by the board pursuant to this Act, and in any proceeding touching any interest in land sought or granted pursuant to this Act, and in any proceeding to determine the boundaries or title to any coastal public lands, venue shall lie in Travis County unless expressly waived in writing by the attorney general.

Rights of littoral owners

Sec. 13. Any littoral owner whose rights may be affected by any action of the board pursuant to this Act shall be permitted to bring suit for a declaratory judgment against the State of Texas in the District Court of Travis County, Texas, to try such issue or issues. Service of citation in such cases may be had by serving the commissioner of the General Land Office.

Funds

Sec. 14. (a) All moneys received by the board for grants under the provisions of this Act of surface interests whose initial term equals or exceeds 20 years shall be deposited in the state treasury to the credit of the permanent school fund.

(b) All moneys received by the board for the granting of permits under this Act shall be deposited in the state treasury to the credit of a special fund hereby created.

(c) All moneys received by the board for the granting of any interest not covered by Subsection (a) or (b) of this section shall be deposited to the state treasury to the credit of the available school fund.

Appeal

Sec. 15. Any interested party aggrieved by any action of the board pursuant to this Act may appeal such action by filing a petition in a district court of Travis County, Texas. The petition must be filed within 30 days after the date of the final action of the board or 30 days after

the effective date of such action, whichever is the later date. Service of citation on the board may be accomplished by serving the commissioner of the General Land Office. In an appeal of a board action, the issue is whether the action is invalid, arbitrary or unreasonable.

Exclusion

Sec. 16. Nothing in this Act shall prevent the littoral owner from developing or otherwise using his property in any lawful manner, nor shall this Act be construed to confer authority on the board to regulate, control, or restrict such use or development. No permit shall be required for structures, excavations, or other similar structures so long as same are located wholly on the private littoral upland, even though such activities may result in the area being inundated by public waters.

Severability

Sec. 17. The provisions of this Act are severable. If any word, phrase, clause, sentence, section, provision, or part of this Act should be held to be invalid or unconstitutional, it shall not affect the validity of the remaining portions, and it is hereby declared to be the legislative intent that this Act would have been passed as to the remaining portions, regardless of the invalidity of any part.

Sec. 18.⁴⁷ REPEALER. Chapter 377, Acts of the 57th Legislature, Regular Session, 1961 (Article 5415c, Vernon's Texas Civil Statutes), is repealed. It is specifically provided that this Act does not repeal Chapters 2 and 3, Title 67, Revised Civil Statutes of Texas, 1925, as amended, nor does this Act affect the power of the School Land Board or the commissioner of the General Land Office to grant interests in coastal public lands under any other law of this state. Provided, however, nothing herein shall be construed to alter, amend or revoke any existing right granted pursuant to any law.

Sec. 19. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house to be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the senate on April 27, 1973, by a viva-voce vote; passed the house on May 12, 1973: Yeas 127, Nays 0, three present not voting.

Approved May 25, 1973.

Effective Aug. 27, 1973, 90 days after date of adjournment.

⁴⁷ Vernon's Ann.Civ.St. art. 5415c, repealed.